



Austin City Council MINUTES

For APRIL 16, 1987 - 1:00 P.M.

Council Chambers, 307 West Second Street, Austin, Texas

City Council

Frank C. Cooksey
Mayor

John Treviño, Jr.
Mayor Pro Tem

Council Members
Mark Rose
Smoot Carl-Mitchell
Sally Shipman
George Humphrey
Charles E. Urdy

Jorge Carrasco
City Manager

Elden Aldridge
City Clerk

Memorandum To:

Mayor Cooksey called to order the meeting of the Council, noting the presence of all Councilmembers.

MINUTES APPROVED

The Council, on Councilmember Rose's motion, Mayor Pro Tem Trevino's second, approved minutes for regular meetings of April 2 and 9, 1987 and special meetings of March 31, 1987 and April 7, 1987. (4-0 Vote, Councilmembers Urdy, Humphrey and Shipman out of the room)

CITIZENS COMMUNICATIONS

Mr. Cary Goodman and Ms. Jean Buster, who had requested to appear for citizen communications, were not in the Council Chamber.

CERTIFICATE OF SUFFICIENCY OF COUNCIL RECALL PETITION

City Clerk Elden Aldridge presented the City Clerk's certificate as to the sufficiency of the Council recall petition filed on the 10th day of April, 1987. See Attachment A.

Dick Stanford, representing the recall petitioners made a statement to Council. Barney Knight, City Attorney, presented his opinion.

OLD BUSINESS

Subdivision of Duplex Lots

The Council, on Councilmember Rose's motion, Councilmember Carl-Mitchell's second, waived the requirement for three readings and finally passed an ordinance correcting and re-enacting ordinances relating to the subdivision of duplex lots. (7-0 Vote)

Zoning Ordinances

The Council, on Councilmember Rose's motion, Councilmember Carl-Mitchell's second, passed through second/third readings of ordinances amending Chapter 13-2A of the Austin City Code (Zoning Ordinance) to cover the following changes: (7-0 Vote)

MILLENIUM
By Graeber, Simmons
& Cowan
CI4r-86-087

6504 Bridgepoint
Parkway

From "LO" to
"GR"

EMERGENCY PASSAGE OF ORDINANCE

First reading on June 26, 1986, (7-0). Conditions have been met as follows: Development restricted to that shown on site plan attached as an exhibit to the ordinance. Restrictive Covenant incorporating conditions imposed by Council has been executed.

LATER:

Motion to Reconsider

The Council, on Mayor Pro Tem Trevino's motion, Councilmember Rose's second, reconsidered. (7-0 Vote)

Mayor Pro Tem Trevino said "We have been informed the applicant was going to offer an alternate restrictive covenant".

Wayne Lott, Diversified Restaurant Management Group, said they plan to put a restaurant in the Millenium Building and asked the owners of the building to increase the seating limitation from 200 seats to 300 seats and to clarify the limitation on square footage by excluding the approved exterior deck. The owners agreed by eliminating a previously approved 15,000 square foot financial services facility, which made additional parking available for the additional 100 seats. Mr. Lott said the proposed parking re-allocation had no effect on the site plan and staff has approved it administratively. Mr. Lott stated, "I'd like to request that a different covenant be approved and attached to the ordinance which shows these changes. The covenant I am requesting was left out of your package. I brought it to your offices yesterday with the message that it was left out. The difference can be seen on item 2 where it says the restaurant is limited to 10,000 square feet of floor space, excluding deck area. The restaurant is further limited to a maximum of 300 seats. The staff has approved it. I respectfully request it be attached to the ordinance and passed on emergency reading."

Councilmember Carl-Mitchell said he would like a statement from staff for the record.

Tracy Watson, Office of Land Development Services, stated: "We have worked with Mr. Lott and this is a change to the condition of approval of the zoning and a substitute to the restrictive covenant. It has been reviewed by staff, it is in order, there is no change to the building footprint, there is no change to any site development and

the parking ratio still works and actually has less than with the bank situation."

Motion

Councilmember Carl-Mitchell made a motion, seconded by Mayor Pro Tem Trevino to approve the zoning change, on EMERGENCY BASIS, with the amended restrictive covenant. (7-0 Vote)

DANIEL WIMMER II
By John Bolt Harris
C14-84-464

12201 and 12202
Tanglewood Drive

From "RR" to
"SF-2"

First reading on April 11, 1985, (6-0). Conditions have been met as follows: Restrictive Covenant incorporating conditions imposed by Council has been executed.

STEINER RANCH
DEVELOPMENT CORP.
By Nancy Riviere
C14-86-129

Quinlan Park Road

From "DR" to
"SF-4", "AG"
"P" and "SF-2"

First reading on August 7, 1986 (7-0). Conditions have been met as follows: Phasing Agreement has been executed.

CHARLIE CHRISTIAN
By Robert H. Hughes
C14-86-120

8315 Burnet Road

From "CS" to
"CS-1"

First reading on July 31, 1986 (7-0). Conditions have been met as follows: Restrictive Covenant incorporating conditions imposed by Council has been executed.

REPOWERING OF SEAHOLM POWER PLANT

The Council, on Councilmember Carl-Mitchell's motion, Councilmember Rose's second, adopted a resolution approving a contract (RFP) with Sargent & Lundy Engineers, for services on the repowering potential of the Seaholm Power Plant in the amount of \$200,000.00. (5-1-0 Vote, Councilmember Humphrey voted No, Councilmember Shipman out of the room)

REALIGNMENT OF WILLIAM CANNON DRIVE

The Council, on Mayor Pro Tem Trevino's motion, Councilmember Rose's second, waived the requirement for three readings and finally

passed a corrective ordinance and amended restrictive covenants relating to realignment of proposed William Cannon Drive as required for final subdivision approval. (7-0 Vote)

CONSENT RESOLUTIONS

The Council, on Mayor Pro Tem Trevino's motion, Councilmember Humphrey's second, adopted the following resolutions in one consent motion: (7-0 Vote)

Eminent Domain Proceedings

Authorized Eminent Domain Proceedings to acquire the following easements for construction of water line improvements to the City of Austin's Water System in Northwest "A" and Northwest "B" Pressure Zones, West Bull Creek Area:

- a. A 0.87 acre tract of land and a 1.04 acre tract of land, both out of a 947.827 acre tract of land, out of the Southern Pacific Railroad Company Survey Nos. 1 and 3 of Travis County, Texas.
- b. A 0.17 acre tract of land, a 0.32 acre tract of land, and a 1.48 acre tract of land, all being out of a 947.827 acre tract of land, out of the Southern Pacific Railroad Company Survey No. 3 of Travis County, Texas.
- c. A 30 foot wide strip of land containing 4 acres out of the Southern Pacific Railroad Company No. 1 Survey, HRS. A.E. Patton Survey, and the John E. Lynn Survey No. 454, all of Travis County, Texas.

Release of Easements

Authorized release of the following easement: A portion of a Public Utility Easement of record in Volume 5, Page 34, Travis County Plat Records, located on Lot 173, Allandale, Section Two, 5700 Woodview. (Request submitted by Mrs. Tony Burger)

Easement

Approved dedication of an easement for street purposes out of a City-owned tract of land at Loyola Lane and Wentworth Drive for Loyola Lane right-of-way.

Change Orders

Approved the following change orders:

- a. In the amount of \$50,109.50 to Lewis Contractors, Inc. for the water and wastewater improvements in South Central Transmission Main Contract. (1.27% increase of the original amount of \$3,949,249.00 - Total change orders to date equal 3.7%) C.I.P. No. 81/22-16

- b. In the amount of \$41,301.00 to Lewis Contractors, Inc., for the water and wastewater improvements in East Austin Transmission Main Phase II Contract. (1.98% increase of the original amount of \$2,081,552.50 - Total change orders to date equal 1.09%) C.I.P. No. 73/22-05

Contracts Approved

Approved the following contracts:

- a. **STAKER CONSTRUCTION COMPANY OF TEXAS, INC.**
P. O. Box 2109
Round Rock, Texas
- CAPITAL IMPROVEMENTS PROGRAM -
Community Development District
No. 23, Delwau Lane Bridge at
Boggy Creek, Transportation and
Public Services Department
Total \$211,499.78 C.I.P. No.
85/62-63
- b. **SOUTHWEST TRENCHING, INC.**
1608 Margaret Street
Houston, Texas
- CAPITAL IMPROVEMENTS PROGRAM -
Installation of Underground
Electric Distribution Facilities
for Great Hills Phase 2, Section 2,
Electric Utility Department
Total \$30,735.58 C.I.P. No.
87/15-01
- c. **SUMMERS ELECTRIC COMPANY**
3910 South Industrial Drive,
Suite 100
Austin, Texas
- CAPITAL IMPROVEMENTS PROGRAM -
Metal Halide Floodlights, Electric
Utility Department
Twelve (12) Month Supply Agreement
Items 1-2 - \$98,385.00 C.I.P.
87/17-01

Item Postponed

Postponed for one week consideration of entering into the following License Agreement: To allow the encroachment of a retaining wall into the public right-of-way of Kassarine Pass located at the rear of Lot 7, Block "K" Revised Amended Plat of Horseshoe Bend, Section Three, 2402 Katy Cove. (Request submitted by Mr. and Mrs. Richard Balough)

Grant Applications

Authorized submission of a grant application to the Criminal Justice Division of the Governor's Office, State of Texas, to allow the Police Department to continue provision of enhanced crisis intervention services.

Authorized submission of a grant application to the Texas Department of Community Affairs for a program to serve the homeless under the Texas Emergency Shelter Grants Program.

Item Postponed

Postponed indefinitely is consideration of revisions to the City of Austin's Grievance Policies and Procedures.

Banner Approved

Authorized placement of a banner across 6th Street and Colorado for the period May 1, 1987 through June 26, 1987. (Requested by Downtown Austin Partners)

Highway 71 Electric Substation

Approved locating, surveying, determining compensation to be paid for said interest, and negotiating for and acquiring fee titles for Highway 71 Electric Substation.

Hickman Electric Substation

Approved locating, surveying, determining compensation to be paid for said interest, and negotiating for and acquiring fee titles for Hickman Electric Substation.

Angus Valley Electric Substation

Approved locating, surveying, determining compensation to be paid for said interest, and negotiating for and acquiring fee titles for Angus Valley Electric Substation.

Public Hearing Set

Approved setting a public hearing on the following:

April 23, 1987 at 5:00 p.m.: Consideration of an ordinance suspending the increase in gas rates proposed by Southern Union Gas Company in SUG Filing No. CT09-86.

ITEM POSTPONED

Postponed until May 7, 1987, consideration of amending the 1986-87 Annual Operating Budget by appropriating an additional \$30,000.00 to the Parks and Recreation Department for the purpose of the Zilker Summer Musical.

MUNICIPAL BUILDING ENERGY CONSERVATION

The Council, on Councilmember Humphrey's motion, Councilmember Carl-Mitchell's second, adopted a resolution approving a contract (RFP) with Young & Pratt for creative financing of energy conservation projects in the Municipal Building, Resource Management Department. (5-0 Vote, Councilmembers Rose and Urdy out of the room)

Motion to Reconsider

Councilmember Carl-Mitchell made a motion, seconded by Mayor Pro Tem Trevino to reconsider. (5-0 Vote, Councilmembers Rose and Urdy out of the room)

Several people had requested to speak on this item. Those who spoke were: Robert J. Grona Jr, Energy Management Institute of Texas; Glenn Randle, Young & Pratt, Inc.; Scott Pargin, Young & Pratt Service, Inc.; and Rik Morris, Young and Pratt. Speakers for Energy Management were asking that their company be awarded the contract.

Motion

The Council, on Councilmember Humphrey's motion, Councilmember Carl-Mitchell's second, adopted a resolution approving the contract (RFP) with Young & Pratt, for creative financing of energy conservation projects in Municipal Building, Resource Management Department. (5-0 Vote, Councilmembers Rose and Urdy out of the room)

REHAB HOSPITAL SERVICES

The Council, on Councilmember Urdy's motion, Mayor Pro Tem Trevino's second, adopted a resolution authorizing negotiation of a land lease with the Rehab Hospital Services Corporation for a site on the Brackenridge Hospital Campus. (5-0 Vote, Mayor Cooksey abstained, Councilmember Rose out of the room)

COMPUTER JOB ACCOUNTING SOFTWARE

The Council, on Councilmember Shipman's motion, Councilmember Carl-Mitchell's second, adopted a resolution approving a one year contract (RFP) with Pace Applied Technology, Inc. for Computer Job Accounting Software in the amount of \$46,000.00. (5-0 Vote, Councilmembers Humphrey and Rose were out of the room)

HUMAN SERVICE NEEDS ASSESSMENT

The Council, on Councilmember Carl-Mitchell's motion, Councilmember Shipman's second, adopted a resolution to fund a portion of a Human Services Needs Assessment along with Travis County and the United Way for the Austin Policy Social Advisory Committee. (5-0 Vote, Councilmembers Rose and Urdy out of the room)

AIRPORT IMPROVEMENTS

The Council, on Councilmember Carl-Mitchell's motion, Mayor Pro Tem Trevino's second, adopted a resolution authorizing for submission of an application to the Federal Aviation Administration for funding participation in eligible airport improvement projects and authorized the City Manager to accept the grant offer, in the approximate amount of \$5,726,092.00 (75% of project costs). (6-0 Vote, Councilmember Humphrey out of the room)

ENERGY MANAGEMENT CONTROL SYSTEMS

The Council, on Councilmember Shipman's motion, Mayor Cooksey's second, adopted a resolution approving a contract (RFP) to Young and Pratt, Inc. for installation of energy management control systems in seven municipal buildings in the amount of \$272,722.50. C.I.P. No. 86/52-02. (4-0 Vote, Councilmembers Humphrey, Rose and Urdy out of the room)

EXECUTIVE SESSION

Mayor Cooksey announced Council would enter into executive session pursuant to Article 6252-17, Texas Revised Civil Statutes Annotated, to discuss matters of land acquisition, litigation, and for personnel matters. No final action, decision or vote by the City Council will be taken on any subject or matter unless specifically listed on the agenda for this meeting.

1. Pending Litigation - Section 2, Paragraph e
 - a. City of Austin v. Houston Lighting and Power
2. Land Acquisition - Section 2, Paragraph f
 - a. Municipal Office Consolidation
 - b. Avante Building

RECESS

Council recessed for executive session from 3:10 p.m. to 5:20 p.m.

ITEM POSTPONED

Postoned to May 21, 1987 is consideration of Zoning Case C14-85-149.22 (part), Coxville Joint Venture, Case 8 (#22).

ZONING HEARING

Mayor Cooksey announced Council would hear the following zoning case. Council heard, closed the public hearing, and passed through FIRST READING ONLY the following:

r-87 AUSTIN PARTNERS
005 I, LTD.
By Bill Harty Co.

4606 U. S. 290
West

From "GO"
To "GO-MU"
FIRST READING

RECOMMENDED "GO/MU" and waiver from the 25' parking and driveway setback requirement of compatibility standards subject to dedication of up to 75 feet of right-of-way from the centerline of U.S. Highway 290 West. If possible, reduce parking per the proposed retirement housing ordinance in order to provide more open space for the residents. Continue working with staff on providing sidewalks in buffer areas.

Councilmember Rose made the motion to approve through first reading, with a second by Councilmember Carl-Mitchell, subject to Planning Commission and staff recommendations. (5-0 Vote, Councilmembers Urdy and Shipman out of the room).

INITIATION OF RE-ZONING APPLICATIONS

The Council, on Councilmember Shipman's motion, Councilmember Humphrey's second, approved directing the Planning Commission to consider an ordinance to provide for the initiation of a rezoning application by homeowners in "SF-3" residential areas to zoning conforming with existing uses. (5-0 Vote, Mayor Pro Tem Trevino and Councilmember Urdy out of the room)

AMENDMENT TO ETHICS AND FINANCIAL DISCLOSURE ORDINANCE

The Council, on Councilmember Rose's motion, Councilmember Urdy's second, waived the requirement for three readings and finally passed an ordinance amending the City of Austin Ethics and Financial Disclosure Ordinance providing that the ordinance shall not prohibit Councilmembers from considering matters related to recall, striking the words "or vote". (7-0 Vote, Mayor Pro Tem Trevino and Councilmember Urdy out of the room)

TRANS AMERICAN NATURAL GAS COMPANY

Councilmember Shipman introduced to Council consideration of a resolution expressing the City of Austin's concern of Oscar Wyatt's attempt to take over Trans American Natural Gas Company.

Jack Place, executive vice-president of Coastal Oil and Gas, told Council to reject the resolution and not get involved in a matter which will be settled by the Federal Bankruptcy Court. Anne Wynne, representing Coastal Oil and Gas, reiterated his remarks.

After some discussion, the following motion was made:

Motion

The Council, on Councilmember Shipman's motion, Councilmember Rose's second, pulled the resolution from the agenda and instructed the City Manager to instruct the City Attorney to follow the case and bring it back to Council if it appears to affect the City of Austin. (7-0 Vote)

ATTITUDES OF CITY EMPLOYEES

Mayor Cooksey introduced a discussion of the attitudes of City employees when rendering service to the citizens. He cited a letter from a Mr. Jenkins who had found three incidents to report

concerning employees' attitudes in a 30 day period. The incidents occurred in Utility Customer Service, airport and the library. Representatives from the three departments explained the incidents which caused a complaint. Mayor Cooksey discussed City employee commitment to the public and City Manager Carrasco agreed with his comments.

PUBLIC HEARING - UTILITY HEARING EXAMINER SYSTEM

Mayor Cooksey opened the public hearing set for 6:00 p.m. to continue the public hearing to consider adopting a utility hearing examiner system. Also to be considered was the Electric Utility Commission's proposal regarding the hiring of two consultants for developing a cost of service methodology.

Speakers at the hearing were Bob Mossman, Federation of Austin Industrial Rate Payers (FAIR); Alan Holman, attorney representing FAIR; Bill Hart of Hart Graphics, Inc.; Richard G. Baldwin, Radian Corporation; Albert Fairweather, Electric Utility Commission; Bill Oakey; and Shudde Fath who spoke against the proposal.

Mayor Cooksey said, "We can proceed in several ways. I do have some amendments I want to make to modify my proposal but I suggest we pass it on first reading."

Motion

Councilmember Rose made a motion, seconded by Mayor Pro Tem Trevino to pass the ordinance on FIRST READING.

Barney Knight, City Attorney, stated: "I would like to remind the Council, for their consideration, of my opinion that the ordinance, as structured, for the appointment of the utility hearing officer as an assistant city clerk is inconsistent with my interpretation of the City Charter. I base that upon the wording of the City Charter and what I thought was a fairly thorough and complete analysis of it. All the duties of a City Clerk or Assistant City Clerk, as expressed in the Charter, are clerical and administrative functions. They are not functions that remotely relate to this type of activity. I think that is a significant issue in the proper interpretation of the City Charter."

Councilmember Rose asked, "Why can't it be an assistant City attorney, then?" Mr. Knight said, "My point is the issue of the City Council appointing that individual. I think certainly you can adopt an ordinance requiring the City Manager to appoint that individual, specifying it will be an arm's length transaction, etc."

Mayor Cooksey said he disagreed with the City Attorney. He said the City Clerk's office can have such duties as determined by the Council and thinks the Charter allows this. He said he wants the hearing examiner to be as divorced as possible from the hierarchy related to the Electric Utility. Mayor Cooksey went on to say if

Council wants to change this on second reading and take it out, "it's no major point, it's just one that I think insures more impartiality and a greater degree of independence on the part of the hearing examiner and that is the reason I structured it that way."

Mr. Knight said, "Without appearing argumentative I would like to finish the few points I had. When I first looked at the provision about assigning other responsibilities to the City Clerk, it seemed to be an open door, if you will. But obviously I don't think the Council could appoint to the assistant city clerk the duties of the Chief of Police, and hopefully not the City Attorney; or to the assistant city manager the director of finance, etc. I did an analysis of the function of the City Clerk to see what types of duties the Clerk is given by Charter. Then you come to some other provisions..". Mr. Knight then went through some points of the City Charter concerning the duties of the City Manager. Mr. Knight then stated: "I just wanted Council to know that if this thing were ever tested thoroughly, the way I perceive our state and federal constitutions, if we put this to a strict court test, in my opinion, I think simply and finally, the hearing officer being in the Clerk's office is not consistent with the intention of the framers of the City Charter."

Mayor Pro Tem Trevino said he will support the motion but he agrees with the City Attorney and will abide by his opinion. Councilmember Urdy also stated he agrees with the opinion of the City Attorney.

Roll Call on Motion

FIRST READING ONLY: 4-3 Vote
Councilmembers Humphrey, Carl-
Mitchell and Shipman voted NO.

No action was taken on consideration of the Electric Utility Commission's proposal regarding the hiring of two consultants for developing a cost of service methodology.

CITY MANAGER REPORTS

The City Manager report on Budget Update was presented at the April 14, 1987 meeting. None of the other reports were presented.

ADJOURNMENT

Council adjourned its meeting at 8:35 p.m.

CERTIFICATE

THE STATE OF TEXAS)
)
 COUNTY OF TRAVIS)

KNOW ALL MEN BY THESE PRESENTS:

I, James E. Aldridge, City Clerk of the City of Austin, Texas, do hereby state that I have completed my examination of that certain petition, consisting of 902 separate petitions, and comprised of 1,524 pages, filed in my office on the 10th day of April, 1987, styled "The Recall Petition," and do hereby certify to the Council as follows:

A.

According to voter registration information from the Travis County and the Williamson County Tax Assessor Collectors, as of April 10, 1987, there were 226,689 qualified voters of the City of Austin. Article IV, Section 7 of the Austin City Charter specifies that to be valid, a recall petition must be signed by at least ten percent of the qualified voters, i.e., 22,669.

My examination of the petition shows it contains 22,367 signatures, 302 signatures fewer than the required percentage. Said number does not represent at least ten percent of the qualified voters of the City of Austin.

B.

Furthermore, Article IV, Section 3 of the Austin City Charter specifies that "One of the signers of each separate petition shall make an affidavit that he, and he only, personally circulated such petition and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be."

Article IV, Section 4, supra, directs the City Clerk to "declare void any petition paper which does not have an affidavit attached thereto as required in Section 3."

My examination shows that 491 separate petitions, containing 14,222 signatures, failed to include, among the signatures appended thereto, the signature of the person who deposed by affidavit that he circulated such petition; such petitions (and all signatures appended thereto) were therefore by me declared void.

C.

V.A.T.S. Election Code Art. 1.08e, "Petitions," (in pertinent part) reads as follows:

Applicability of Section

Subd. 1. Except for a petition for a local option election under the Alcoholic Beverage Code, this section applies to all petitions authorized or required by state law or by home-rule city charter.

Validity of Petition Signatures

Subd. 2. (a) For a petition signature to be valid, a petition must:

(1) contain, in addition to the signature:

(A) the signer's printed name;

(B) the signer's voter registration number and, if the territory from which signatures may be obtained is situated in more than one county, the county of registration;

(C) the signer's residence address; and,

(D) the date of signing; and

(2) comply with any additional requirements prescribed by applicable state law.

(b) It shall not be necessary that a voter registration certificate number be in the signer's own handwriting.

My examination shows that on 409 petitions, other than those voided in their entirety pursuant to Article IV, Section 4 of the Charter, 6,874 signatures failed to contain, in addition to the signature, the signer's voter registration number and/or the county of voter registration and/or the date of signing.

Therefore, those petition signatures, numbering 6,874, which do not contain, in addition to the signature, the elements required by the Election Code as per 1.08e, are invalid.

D.

Furthermore, Article IV, Section 4 of the Austin City Charter requires that the signers of a petition be qualified to vote.

My examination of the petition shows that it contains the signatures of 194 persons not qualified to vote. The letters

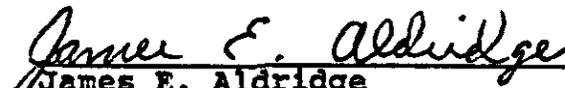
"D.V." have been written in red ink opposite the names of the signers not qualified to vote.

E.

Of the 1,077 signatures, not voided or invalid, 4 signatures appear on more than one petition. Duplicate signatures were counted but once.

WHEREFORE, PREMISES CONSIDERED, I do hereby certify that examination of the recall petition resulted in my determination that said petition contains 22,367 signatures; that the petition contains 1,073 valid signatures; that said petition is not signed by the requisite number of qualified voters; and that said petition be, and the same is hereby certified to be INSUFFICIENT.

GIVEN UNDER MY HAND AND SEAL OF OFFICE AT AUSTIN, TEXAS, this the 16th day of April, 1987.



James E. Aldridge
City Clerk